

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HENRY B. FLOYD, III and NATIONAL AERONAUTICS & SPACE  
ADMINISTRATION, MARSHALL SPACE FLIGHT CENTER, Huntsville, AL

*Docket No. 99-813; Submitted on the Record;  
Issued January 16, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant had more than a 28 percent impairment of his penis for which he received a schedule award.

On March 10, 1975 appellant, then a 48-year-old engineer, filed a claim for compensation on account of injury or occupational disease (Form CA-4), alleging that, on January 7, 1975, he injured himself when he was hurrying to catch an elevator and his foot slipped on a waxed vinyl floor, causing him to fall. Appellant stopped work on March 9, 1975 and did not return. Appellant's claim was accepted for abrasions of the left buttock and right knee, extruded L4-5 disc, left; lumbosacral strain; prolapsed internal hemorrhoids, depressive reaction, neurogenic bladder dysfunction; prostatitis, sexual dysfunction; gastric ulcer; right direct inguinal hernia; aggravation of cervical spondylosis; urinary tract infection and depressive neurosis.

Appellant underwent lumbar laminectomy (L4-5 and L5-S1) in May 1975, but continued to have pain and urinary problems, as well as problems with impotence after the surgery.

In a medical report dated June 23, 1998, Dr. L. Keith Lloyd, a urologist, opined as follows:

"His bladder dysfunction and recurrent episodes of prostatitis and sexual dysfunction would appear to be in all likelihood related to his injury in 1975. His impaired libido is in part related to his low serum testosterone which I believe is a separate issue and should be treated by his private physician. The Peyronie's disease, in my opinion, is not likely related to his injuries and may have some additional negative effect on sexual function.

"Based on the American Medical Association *Guides [to the Evaluation of Permanent Impairment]*, fourth edition, I estimate his permanent disability as follows: bladder dysfunction -- 10 percent, sexual dysfunction -- 15 percent and prostate dysfunction -- 5 percent. Combining these disabilities according to the

chart on page 322 results in a total impairment rating of 28 percent. I estimated 10 percent impairment for bladder because he has some voiding symptoms although not severe and does not have significant incontinence yet has had intermittent episodes of cystitis and prostatitis. I estimate impairment of sexual function at 15 percent because penile sensation was normal and he has Peyronie's disease which could result in some impairment of erectile dysfunction [sic] and is not related to his original injuries. He also has hypogonadism which impairs his libido and sexual function and is not likely related to his original injury either. I estimated his impairment for prostatitis at 5 percent since he has intermittent episodes of prostatitis not requiring continuous treatment. These disabilities add up to a total of 28 percent according to the charts and this would appear to be reasonable."

By memorandum dated July 20, 1998, the Office of Workers' Compensation Programs sent the Office medical adviser Dr. Lloyd's report, and requested his opinion. The Office medical adviser responded on the same date, indicating that pursuant to pages 254-59 of the A.M.A., *Guides*, he opined that appellant's bladder and difficulty voiding amounted to a ten percent impairment under the A.M.A., *Guides*, that his sexual dysfunction amounted to an impairment of fifteen percent, and that his intermittent prostatitis amounted to a five percent impairment. The Office medical adviser combined these values and determined that appellant had a 28 percent permanent impairment.

In a decision dated July 23, 1998, the Office awarded appellant a schedule award based upon a 28 percent permanent impairment of the penis.

The Board finds that appellant has no greater than a 28 percent permanent loss of use of his penis.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup>

Neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.<sup>4</sup> The method used in making such determination rests in the sound discretion of the Office.<sup>5</sup> For consistent results and to ensure equal justice for all

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304 (1998).

<sup>3</sup> 5 U.S.C. § 8107(c)(3)(19); *John M. Gonzales, Jr.*, 48 ECAB 357, 360 (1997).

<sup>4</sup> *Thomas J. Engelhart*, 50 ECAB \_\_\_\_ (Docket No. 97-403, issued April 9, 1999).

<sup>5</sup> *George E. Williams*, 44 ECAB 530 532 (1993).

claimants, the Office has adopted and the Board has approved, the use of the A.M.A., *Guides* as the uniform standard applicable to all claimants for determining the percentage of impairment.<sup>6</sup>

However, no schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations. The Act identifies members such as the arm, leg, hand, foot, thumb and finger, functions as loss of hearing and loss of vision, and organs to include the eye. Section 8107(c)(22) of the Act, provides for the payment of compensation for permanent loss of “any other important external or internal organ of the body as determined by the Secretary of Labor.”<sup>7</sup> The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.<sup>8</sup>

In the instant case, Dr. Lloyd referred to the A.M.A., *Guides* when determining that appellant had a 28 percent impairment of the penis. As the A.M.A., *Guides* require, Dr. Lloyd made separate determinations for bladder dysfunction (10 percent), sexual dysfunction (15 percent) and prostate dysfunction (5 percent). Dr. Lloyd carefully explained how he arrived at these individual figures, and then explained that he combined these values pursuant to the chart on page 322 and determined that appellant suffered from a 28 percent loss of use of his penis. The Office medical adviser further confirmed Dr. Lloyd’s results, citing to pages 254-59 of the A.M.A., *Guides*.

As both Dr. Lloyd and the Office medical examiner properly applied the A.M.A., *Guides*, and there is no evidence in the record establishing that appellant had more than a 28 percent impairment of his penis, the Office properly granted a schedule award for 28 percent of the penis.

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<sup>6</sup> *James J. Hjort*, 45 ECAB 595, 599 (1994).

<sup>7</sup> 5 U.S.C. § 8107(c)(22).

<sup>8</sup> 20 C.F.R. § 10.304 (1998).

The decision of the Office of Workers' Compensation Programs dated July 23, 1998 is affirmed.

Dated, Washington, DC  
January 16, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member